

HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR
HOUSE BILL 308

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
PROVIDING THAT A PORTION OF STATE AND LOCAL GROSS RECEIPTS AND
COMPENSATING TAX REVENUE IMPOSED ON CERTAIN ECONOMIC
DEVELOPMENT PROJECTS MAY BE PROVIDED AS PUBLIC SUPPORT FOR THE
PROJECTS PURSUANT TO THE LOCAL ECONOMIC DEVELOPMENT ACT;
PROVIDING TRANSFERS AND DISTRIBUTIONS OF THE PORTION OF STATE
AND LOCAL GROSS RECEIPTS AND COMPENSATING TAX REVENUE;
DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 5-10-14 NMSA 1978 (being Laws 2020,
Chapter 74, Section 1) is amended to read:

"5-10-14. LOCAL [~~AND REGIONAL~~] ECONOMIC DEVELOPMENT
[~~SUPPORT~~] ACT FUND [~~ECONOMIC DEVELOPMENT DEPARTMENT~~].--

A. The "Local [~~and regional~~] Economic Development

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1 ~~[support]~~ Act fund" is created in the state treasury. ~~[The~~
2 ~~fund consists of gifts, grants, donations and bequests made to~~
3 ~~the fund and appropriations made to the department for projects~~
4 ~~pursuant to the Local Economic Development Act.]~~ Income from
5 the fund shall be credited to the fund. Money in the fund
6 shall not revert or be transferred to any other fund at the end
7 of a fiscal year. ~~[B.]~~ The department shall administer the
8 fund, and money in the fund is appropriated to the department
9 to pay the cost of administering the fund and for
10 ~~[participation in local and regional]~~ economic development
11 projects ~~[as determined by the department. C.]~~ pursuant to the
12 Local Economic Development Act. Money in the fund shall be
13 expended on warrants of the department of finance and
14 administration pursuant to vouchers signed by the secretary of
15 economic development.

16 B. The following may be used to provide public
17 support for certain economic development projects of qualifying
18 entities pursuant to Section 2 of this 2021 act and shall be
19 separately accounted for in the fund:

20 (1) fifty percent of the tax revenue
21 attributable to the state gross receipts tax and the state
22 compensating tax, as determined pursuant to Subsection A of
23 Section 2 of this 2021 act, and distributed pursuant to
24 Subsection A of Section 5 of this 2021 act; and

25 (2) that portion of the tax revenue

1 attributable to the local option gross receipts tax and county
 2 compensating tax imposed by a county and local option gross
 3 receipts tax and municipal compensating tax imposed by a
 4 municipality dedicated pursuant to Subsection B of Section 2 of
 5 this 2021 act and distributed pursuant to Subsection B of
 6 Section 5 of this 2021 act."

7 **SECTION 2.** A new section of the Local Economic
 8 Development Act is enacted to read:

9 "[NEW MATERIAL] GROSS RECEIPTS TAX AND COMPENSATING TAX
 10 REVENUE AS PUBLIC SUPPORT FOR CERTAIN PROJECTS.--

11 A. A qualifying entity that meets the following
 12 requirements may receive public support for the qualifying
 13 entity's economic development project from funds in the Local
 14 Economic Development Act fund pursuant to Subsection B of
 15 Section 5-10-14 NMSA 1978 in an amount equal to fifty percent
 16 of the net receipts attributable to the state gross receipts
 17 tax and state compensating tax imposed on the expenses related
 18 to the construction of the qualifying entity's project, as
 19 determined by the department, related to the economic
 20 development project and the amount dedicated pursuant to
 21 Subsection B of this section; provided that the public support
 22 shall be provided for a period of no more than ten years,
 23 beginning on the date the applicable project participation
 24 agreement with the qualifying entity is executed:

25 (1) the qualifying entity signs a project

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1 participation agreement with the governing body of each local
2 government that has jurisdiction of the area in which the
3 qualifying entity's economic development project is located and
4 the local government has passed an ordinance dedicating local
5 government gross receipts tax revenue pursuant to Subsection B
6 of this section;

7 (2) the qualifying entity signs a project
8 participation agreement with the department; provided that the
9 department shall not sign the agreement unless the applicable
10 local governments have signed a project participation agreement
11 pursuant to Paragraph (1) of this subsection; and provided
12 further that the project participation agreement shall provide
13 that if, at the end of the ten-year period, the economic
14 development project fails to meet the three-hundred-fifty-
15 million-dollar (\$350,000,000) requirement pursuant to Paragraph
16 (3) of this subsection, the department shall seek to recover
17 some or all of the public support provided to the qualifying
18 entity and shall transfer any amount recovered to the general
19 fund and to the contributing local government based on each
20 entity's pro rata share of public support to the economic
21 development project;

22 (3) the economic development project has a
23 reasonable expectation to incur, within ten years of the date
24 the project participation agreement with the local government
25 and the department is executed, at least three hundred fifty

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1 million dollars (\$350,000,000) in expenses related to the
2 construction and infrastructure of the project in the state;

3 (4) the qualifying entity and the economic
4 development project meet all other requirements to receive
5 public support pursuant to the Local Economic Development Act;
6 and

7 (5) prior to the end of each month, the
8 qualifying entity submits the appropriate documents, including
9 tax documents of the qualifying entity and its contractors
10 submitted to the taxation and revenue department, to the
11 department and to the local governments with which the
12 qualifying entity signed a project participation agreement, on
13 forms and in a manner determined by the department, of the
14 taxable expenses related to the construction of the economic
15 development project for the previous month.

16 B. A local government may dedicate, by ordinance,
17 fifty percent of the tax revenue attributable to the gross
18 receipts and compensating taxes imposed by the local government
19 on the qualifying entity's receipts for expenses related to the
20 construction of the economic development project to the Local
21 Economic Development Act fund for the purposes provided in
22 Subsection B of Section 5-10-14 NMSA 1978.

23 C. Within thirty days after execution of a project
24 participation agreement with a qualifying entity, the
25 department shall issue a report to the department of finance

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1 and administration and the legislative finance committee that
2 shall identify the qualifying entity intended to receive public
3 support pursuant to this section, the estimated expenses
4 related to the construction of the qualifying entity's project
5 as determined by the department, the location of the project,
6 the amount of public support pledged by the department and each
7 local government for the project pursuant to this section and
8 the amount of any other public support pledged for the project
9 pursuant to the Local Economic Development Act.

10 D. As soon as practicable, the taxation and revenue
11 department shall implement a rate type to identify gross
12 receipts and compensating taxes reported and paid to the
13 taxation and revenue department for expenses related to the
14 construction of an economic development project. Once
15 implemented, all such gross receipts and compensating taxes
16 shall be reported and paid with that rate type.

17 E. If the taxation and revenue department has not
18 implemented the rate type provided in Subsection D of this
19 section, and if the requirements of Subsection A of this
20 section have been met, the economic development department and
21 the local governments that signed a project participation
22 agreement with the qualifying entity shall:

23 (1) review the documents submitted by a
24 qualifying entity pursuant to Paragraph (5) of Subsection A of
25 this section;

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1 (2) estimate the amount equal to fifty percent
2 of the tax revenue attributable to the gross receipts tax and
3 compensating tax imposed on the taxable expenses related to the
4 construction of the economic development project appropriate
5 to:

6 (a) the local government's gross
7 receipts and compensating taxes if a local government; and

8 (b) the state gross receipts and
9 compensating taxes if the department;

10 (3) if a local government, on the first
11 business day of each month, submit the estimated amount and the
12 supporting documents to the department; and

13 (4) if the department, on or before the
14 twenty-fifth day of December, March, June and September,
15 provide the estimates and any supporting documentation to the
16 taxation and revenue department, on forms and in a manner
17 determined by that department.

18 F. The taxation and revenue department shall review
19 the amounts estimated pursuant to Subsection E of this section
20 for accuracy and computation, make any necessary corrections or
21 adjustments and make a final determination of the amounts to be
22 distributed from the relevant tax revenue pursuant to Section 5
23 of this 2021 act."

24 **SECTION 3.** Section 7-1-6.12 NMSA 1978 (being Laws 1983,
25 Chapter 211, Section 17, as amended) is amended to read:

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1 "7-1-6.12. TRANSFER--REVENUES FROM MUNICIPAL LOCAL OPTION
2 GROSS RECEIPTS AND COMPENSATING TAXES.--

3 A. A transfer pursuant to Section 7-1-6.1 NMSA 1978
4 shall be made to each municipality for which the department is
5 collecting a local option gross receipts tax and municipal
6 compensating tax imposed by that municipality in an amount,
7 subject to any increase or decrease made pursuant to Section
8 7-1-6.15 NMSA 1978, equal to the net receipts attributable to
9 the local option gross receipts tax and municipal compensating
10 tax imposed by that municipality, less any deduction for
11 administrative cost determined and made by the department
12 pursuant to the provisions of the act authorizing imposition by
13 that municipality of the local option gross receipts tax and
14 municipal compensating tax and any additional administrative
15 fee withheld pursuant to Section 7-1-6.41 NMSA 1978.

16 B. A transfer pursuant to this section may be
17 adjusted for a distribution made to a tax increment development
18 district with respect to a portion of a gross receipts tax
19 increment dedicated by a municipality pursuant to the Tax
20 Increment for Development Act.

21 C. A transfer pursuant to this section shall be
22 adjusted for a distribution made to the Local Economic
23 Development Act fund pursuant to Section 5 of this 2021 act and
24 with respect to the amount dedicated by a municipality pursuant
25 to Subsection B of Section 2 of this 2021 act."

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1 SECTION 4. Section 7-1-6.13 NMSA 1978 (being Laws 1983,
2 Chapter 211, Section 18, as amended) is amended to read:

3 "7-1-6.13. TRANSFER--REVENUES FROM COUNTY LOCAL OPTION
4 GROSS RECEIPTS AND COMPENSATING TAXES.--

5 A. ~~[Except as provided in Subsection B of this~~
6 ~~section]~~ A transfer pursuant to Section 7-1-6.1 NMSA 1978 shall
7 be made to each county for which the department is collecting a
8 local option gross receipts tax and county compensating tax
9 imposed by that county in an amount, subject to any increase or
10 decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to
11 the net receipts attributable to the local option gross
12 receipts tax and county compensating tax imposed by that
13 county, less any deduction for administrative cost determined
14 and made by the department pursuant to the provisions of the
15 act authorizing imposition by that county of the local option
16 gross receipts tax and county compensating tax and any
17 additional administrative fee withheld pursuant to Section
18 7-1-6.41 NMSA 1978.

19 B. A transfer pursuant to this section may be
20 adjusted for a distribution made to a tax increment development
21 district with respect to a portion of a gross receipts tax
22 increment dedicated by a county pursuant to the Tax Increment
23 for Development Act.

24 C. A transfer pursuant to this section shall be
25 adjusted for a distribution made to the Local Economic

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1 Development Act fund pursuant to Section 5 of this 2021 act and
2 with respect to the amount dedicated by a county pursuant to
3 Subsection B of Section 2 of this 2021 act."

4 SECTION 5. A new section of the Tax Administration Act is
5 enacted to read:

6 "[~~NEW MATERIAL~~] DISTRIBUTION--LOCAL ECONOMIC DEVELOPMENT
7 ACT FUND.--

8 A. A distribution pursuant to Section 7-1-6.1 NMSA
9 1978 shall be made to the Local Economic Development Act fund
10 equal to the following amounts of the following taxes imposed
11 and paid on the expenses related to the construction of the
12 qualifying entity's economic development project, as determined
13 pursuant to Section 2 of this 2021 act:

14 (1) fifty percent of the net receipts
15 attributable to state gross receipts tax and the state
16 compensating tax; and

17 (2) fifty percent of the net receipts
18 attributable to the local option gross receipts tax and county
19 compensating tax imposed by a county and local option gross
20 receipts tax and municipal compensating tax imposed by a
21 municipality.

22 B. As used in this section:

23 (1) "economic development project" means
24 "economic development project" as used in the Local Economic
25 Development Act; and

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(2) "qualifying entity" means "qualifying entity" as used in the Local Economic Development Act."

SECTION 6. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

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